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MAY 15 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DOUGLAS ROQUET and MACHELLE)	
MARTINEZ, husband and wife,)	2 CA-CV 2012-0122
)	DEPARTMENT A
Plaintiffs/Counterdefendants/Appellees,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 28, Rules of Civil
DORA DEXTER,)	Appellate Procedure
)	
Defendant/Counterclaimant/Appellant.)	
)	

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. CV-08-385

Honorable Wallace R. Hoggatt, Judge

AFFIRMED

Durazzo, Eckel & Hawkins, P.C.
By Eric Hawkins

Tucson
Attorneys for
Plaintiffs/Counterdefendants/Appellees

Fidelis V. Garcia

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Attorney for
Defendant/Counterclaimant/Appellant

M I L L E R, Judge.

¶1 Dora Dexter appeals from the June 2012 judgment (“corrected judgment”) in which the trial court changed defendant “Jane Doe Dexter” to “Dora Dexter” pursuant to

Rule 60(a), Ariz. R. Civ. P. She contends the change in judgment constituted more than a clerical correction. Because the court acted in accordance with the plain language of Rule 60(a) and (b)(2), Ariz. R. Civ. P., and relevant case law, we affirm.

Factual and Procedural Background

¶2 In January 2011, following a bench trial, the trial court entered judgment on Douglas Roquet and Machel Martinez's (collectively "Roquet") breach of contract claim against defendants Anthony Wayne Dexter and Jane Doe Dexter, husband and wife; Dexter Construction, an Arizona sole proprietor; Dexter Construction Co., Inc., an Arizona corporation; ABC Entities 1-10; and XYZ Corporations 1-10. In May 2012, Roquet moved for relief from judgment pursuant to Rule 60(a) and sought to amend the judgment to reflect Jane Doe Dexter's true name, Dora Dexter. Dora Dexter opposed the motion arguing that such a change to the judgment would be substantive rather than clerical. She also argued the motion was an attempt to "try and correct Roquet's failure to default Dora Dexter pursuant to Rule 55," Ariz. R. Civ. P., or, in the alternative, an "attempt to circumvent Rule 59(l)," Ariz. R. Civ. P.

¶3 The trial court granted Roquet's motion to amend, including numerous findings of fact in its decision and order, and subsequently signed the corrected judgment, reflecting Dora Dexter's true name. This timely appeal followed. We have jurisdiction pursuant to A.R.S. § 12-2101(A)(2).

Discussion

¶4 On appeal, Dexter raises largely the same arguments brought before the trial court. She argues that because Roquet sought to amend the court's January 2011 judgment to reflect Dexter's true identity, Roquet was required to seek relief under Rule 59(1), which requires that a motion to alter or amend a judgment shall not be filed later than fifteen days after entry. Dexter further argues that the relief granted to Roquet constituted more than the correction of a clerical error. We review a court's decision to grant a Rule 60 motion for an abuse of discretion. *See Johnson v. Elson*, 192 Ariz. 486, ¶ 9, 967 P.2d 1022, 1024-25 (App. 1998); *see also Blanton v. Anzalone*, 813 F.2d 1574, 1577 (9th Cir. 1987).

¶5 Rule 60(a) provides that “[c]lerical mistakes in judgments . . . arising from oversight or omission may be corrected by the court at any time of its own initiative or on motion of any party.” Ariz. R. Civ. P. 60(a). An error is clerical if it does not involve the adjudicatory process. *Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 142, 750 P.2d 898, 900 (App. 1987). A trial court may alter a judgment pursuant to Rule 60(a) if it implements “what the court *originally intended* to do.” *Blanton*, 813 F.2d at 1577. For example, Rule 60(a) allows corrections of mistakes even when the mistakes were not committed by the clerk. *See Jones & Guerrero Co. v. Sealift Pac.*, 650 F.2d 1072, 1074 (9th Cir. 1981). Rule 60(b)(2), Ariz. R. Civ. P., specifically directs the court to correct a judgment “[w]here there is a mistake, miscalculation or misrecital of a sum of money, *or of a name.*” (Emphasis added.)

¶6 Beyond the plain language of Rule 60(a) and (b)(2), there is ample support in federal case law for the very relief granted by the trial court here. “The Arizona Rules of Civil Procedure were adopted from the federal rules,” and thus we may look to federal case law and “give great weight to interpretations given to similar federal rules.” *La Paz County v. Yuma County*, 153 Ariz. 162, 164, 735 P.2d 772, 774 (Ariz. 1987). Rule 60(a) is nearly identical to its federal counterpart. *Compare* Ariz. R. Civ. P. 60(a), *with* Fed. R. Civ. P. 60(a); *see also* *Fidelity Nat’l Fin., Inc. v. Friedman*, 855 F.Supp.2d 948, 960 (D. Ariz. 2012) (similarity between Rule 60(a), Ariz. R. Civ. P., and Rule 60(a), Fed. R. Civ. P., not a coincidence). Federal courts have specifically held that Rule 60(a), Fed. R. Civ. P., allows the correction of judgment errors with respect to a defendant’s name. *See Fluoro Elec. Corp. v. Branford Assocs.*, 489 F.2d 320, 326 (2d Cir. 1973) (holding there was no error in granting plaintiff’s motion for correction of misnamed party defendant and directing clerk to delete the words “a corporation” from defendant’s name in judgment); *see also* *PacifiCorp Capital, Inc. v. Hansen Props.*, 161 F.R.D. 285, 288 (S.D.N.Y. 1995) (correcting name of defendant in judgment from “Hansen Properties” to “Hansen Properties, Inc.”). These cases stand for the simple proposition that “[i]f a plaintiff sues and intends to sue a particular person or entity, Rule 60 is an appropriate vehicle through which to correct an inadvertent error in the name of the defendant.” *PacifiCorp Capital*, 161 F.R.D. at 288; *cf. State v. Surety Ins. Co. of California*, 137 Ariz. 351, 353, 670 P.2d 1175, 1177 (App. 1983) (nunc pro tunc order correcting name of party is clerical function rather than judicial discretion).

¶7 In its June 2012 decision and order, the trial court found that Dora Dexter had been served personally and that all defendants, including “Jane Doe Dexter,” had filed an answer to the complaint and counterclaim, which alleged, “Defendants, WAYNE DEXTER and DORA DEXTER, at all times material herein, were husband and wife, residents of Santa Cruz County, and doing business as Dexter Construction, Inc., and/or Dexter Construction.” The record also demonstrated that throughout the proceedings “all parties have shared the understanding that the person named in the caption of this legal action as ‘Jane Doe Dexter’ is, in fact, Dora Luz Dexter.”

¶8 The corrected judgment reflected Dora Dexter’s true name pursuant to Rule 60(a). Unlike *PacifiCorp* and *Fluoro Electric*, which involved corporations, and in which a change to the name meant changing the legal entity responsible, the clerical correction of Dexter’s name in this case is far simpler. As documented in the record and outlined in the June 2012 decision and order, Jane Doe Dexter is legally the same individual as Dora Dexter. The court did not err in amending the January 2011 judgment as the court’s clear intention was to enter judgment against Dora Dexter.

Disposition

¶9 For the reasons stated above, we affirm. In addition, Roquet requested attorney fees and costs on appeal pursuant to A.R.S. §§ 12-349 and 12-341.01. In our discretion, we award Roquet reasonable attorney fees and costs incurred in this appeal under A.R.S. § 12-341.01, subject to Roquet’s compliance with Rule 21(c), Ariz. R. Civ.

App. P. *See Chaurasia v. General Motors Corp.*, 212 Ariz. 18, ¶ 49, 126 P.3d 165, 177 (App. 2006).

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge